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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Petition for Reconsideration of US West	)	DA 00-760
Wireless, LLC and Sprint Spectrum L.P. dba	)	
Sprint PCS	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 97-82
Regarding Installment Payment Financing for	)	
Personal Communications Service (PCS)	)	
Licenses	)	
	)	
Order on Reconsideration of the Fourth Report	)	
and Order	)	

To: Wireless Telecommunications Bureau

#### OPPOSITION OF OPM AUCTION CO.

OPM Auction Co. ("OPM") hereby responds to a joint petition for reconsideration filed by US West Wireless, LLC and Sprint Spectrum L.P. dba Sprint PCS (collectively, "Petitioners") regarding the Federal Communications Commission's ("FCC" or "Commission") C and F block auction rules.<sup>1</sup> OPM is a successful participant in the Commission's recent March 1999 C block reauction,<sup>2</sup> and is currently in the process of establishing wireless networks in West Virginia, Illinois,

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<sup>1</sup>See US West Wireless, LLC and Sprint Spectrum L.P. dba Sprint PCS, Petition for Reconsideration (Expedited Action Requested) (April 4, 2000) ("Petition"); see also Public Notice, DA 00-760 (April 5, 2000).

<sup>2</sup>See C, D, E, and F Block Broadband PCS License Auction Closes, Public Notice, DA 99-757 (April 20, 1999).

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and the Virgin Islands pursuant to six C block licenses received following that auction.<sup>3</sup> As a qualified designated entity (“DE”) pursuant to Section 24.709 of the Commission’s rules,<sup>4</sup> OPM plans to participate in the upcoming C and F block reauctions currently scheduled for July 26, 2000, and accordingly has an interest in the outcome of this proceeding.

In the above-captioned *Public Notice*, the Commission seeks comment on Petitioners’ request that non-DEs be permitted to participate in the upcoming July 26 reauction of C and F block licenses, and that the Commission divide each 30 MHz C block license into three 10 MHz licenses. Petitioners also propose that the Commission continue to provide a qualified DE with bidding credits for all C and F block licenses, as well as utilize a single simultaneous multiple-round auction on a BTA basis without regard to license aggregation beyond the 98 license limit that currently applies to C and F block licenses.

OPM wishes to reiterate its belief, which it has voiced in both its Comments<sup>5</sup> and its Reply Comments,<sup>6</sup> that the Commission’s DE eligibility rules are the cornerstone of the FCC’s statutory obligation to “ensur[ing] that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision

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<sup>3</sup>OPM is a wholly-owned subsidiary of Telecom Wireless Solutions, Inc., which is engaged in the provision of quality radio frequency engineering, network design, project management, and related services to the wireless telecommunications industry.

<sup>4</sup>47 C.F.R. § 24.709.

<sup>5</sup>See Comments of OPM, to the Petition for Expedited Rulemaking or, in the Alternative, Waiver of the Commission’s Rules, of Nextel Communications, Inc. (Jan. 31, 2000), and the Petition for a Waiver of Section 24.709 and for Expedited Action, of SBC Communications, Inc. (Jan. 21, 2000) (“Nextel/SBC Petitions”).

<sup>6</sup>See Reply Comments of OPM, to the Nextel/SBC Petitions.

of spectrum-based services.”<sup>7</sup> OPM is optimistic that the Commission will not heed the siren’s song of some carriers that DE eligibility should be stripped away due to the unfortunate experience of two DE bidders. The record is replete with examples of DEs that have successfully bid, have made payments, and are building PCS systems.<sup>8</sup>

Although OPM agrees with Petitioners’ proposals regarding retaining bidding credits for DEs and the use of a single simultaneous multiple-round auction on a BTA basis,<sup>9</sup> OPM defends the current C and F block reauction framework that preserves Section 309(j) of the Communications Act’s mandate to ensure that DEs have the opportunity to obtain auctioned licenses that permit meaningful participation in the provision of spectrum-based services. Accordingly, the Commission should not consider deviating from the current auction rules, which are a proven framework that preserves meaningful DE participation as well as successful auction results. OPM submits that even opening eligibility to 10 MHz of C block spectrum would not preserve DEs’ ability to participate meaningfully in the reauction and compete in the wireless marketplace. As set forth below, this would undermine Section 309(j)’s meaningful participation requirement.

Congress adopted Section 309(j) of the Communications Act out of concern that DEs needed specific protections against competitive bidding procedures that increase the cost of entry to provide spectrum-based services.<sup>10</sup> According to Congress, for competitive bidding procedures to be

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<sup>7</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>8</sup> See, e.g., Comments of Alaska DigiTel *et al.* at 5, Devon Mobile at 3; Reply Comments of OPM at 9, to the Nextel/SBC Petitions.

<sup>9</sup> OPM maintains that the 98-license cap in Section 24.710 of the Commission’s rules is essential to realizing the goal of disseminating licenses among a wide group of applicants and avoiding excess concentration. See Comments of OPM at 5, to the Nextel/SBC Petitions.

<sup>10</sup> See H.R. Rep. No. 103-111, at 255 (1993); see also *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9

meaningful, they must result in DEs actually competing successfully at auction and receiving licenses.<sup>11</sup> The Commission implemented this mandate by reserving C and F block licenses for small business applicants.<sup>12</sup> Thus, the DE eligibility requirement prevents existing, large carriers with “deep pockets” from inflating prices beyond the reach of most DEs.

A review of the most recent PCS auction of C, D, E, and F block Broadband PCS licenses bears out that the DE eligibility requirement works. Any question whether the current reauction framework avoids what may be seen by some as past failures of the C and F block winners is answered by looking at the outcome of the last reauction. It resulted in the acquisition of licenses by viable DEs, like OPM, who complied with the rules and are in the process of building and/or operating their systems.<sup>13</sup>

DEs cannot meaningfully participate in the auction, nor successfully build out systems, if they are not afforded this spectrum. OPM’s business models and investment backing rely on its ability to successfully obtain a block of at least 30 MHz of spectrum in a given market.<sup>14</sup> Thirty MHz is required if DEs are to be able to compete in the wireless marketplace.

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F.C.C.R. 5532, 5337 (1994).

<sup>11</sup>See 47 U.S.C. § 309(j)(3)(B), (4)(C), (4)(D).

<sup>12</sup>See 47 C.F.R. § 24.709(a).

<sup>13</sup>See, e.g., Comments of CT Communications at 7, Georgetown Partners at 7, Alaska DigiTel *et al.* at 4-5, American Wireless at 4-5; Reply Comments of OPM at 10, to the Nextel/SBC Petitions.

<sup>14</sup>While some contend that 10 MHz is sufficient for a new system, *see, e.g.*, Comments of Sprint PCS at 5, to the Nextel/SBC Petitions, OPM believes that 10 MHz does not come close to providing sufficient capacity for growth. We note that Petitioners are requesting additional blocks of 10 MHz in size because existing carriers are exhausting their present capacity and want to deploy new services. *See* Petition at 5.

OPM does not advocate a departure from the existing reauction framework. The instant proposals are not feasible alternatives to solving Petitioners' and other carriers' concerns over obtaining adequate spectrum for expansion in their existing large markets without impermissibly compromising the ability of DEs to have meaningful Section 309(j) participation. The proposed alternatives not only undo the reasoned and relied upon existing auction rules, but would prevent DEs from obtaining the critical 30 MHz of spectrum to launch new systems in large and small markets alike. The issue before the Commission, therefore, is not whether DE eligibility should be removed, but how much can be taken from the DE-eligible spectrum before DEs' ability to meaningfully compete in the auction and the marketplace is impermissibly eroded. OPM asserts that the none of the currently DE designated spectrum can be taken without this occurring.

If there is one point on which all commenters have agreed it is that the Commission is being asked to make substantial changes to the auction rules as the date for the auction rapidly approaches.<sup>15</sup> The Commission should release an Order which explicitly addresses and resolves all the issues.<sup>16</sup>

It is of paramount importance that the Order be issued in a timely manner. There must be sufficient time between the release of an Order and the reauction for DEs (and the investment community) to digest the text of the Order and respond to it. Based on its previous experience in developing business plans and auction strategies as well as interacting with the investment community, OPM believes that, at a minimum, the Order must be released sixty days before FCC Form 175 Applications are due. If the Commission is unable to provide this 60 day "buffer" because

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<sup>15</sup>See, e.g., Comments of Burst Networks at 11; Reply Comments of OPM at 11, to the Nextel/SBC Petitions.

<sup>16</sup>See Petition at 8-9.

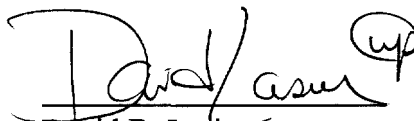
of the rapidly approaching July 26th date, OPM urges the Commission to extend the date of the scheduled reauction.

### **CONCLUSION**

OPM continues to believe that, as demonstrated by the last reauction, DE eligibility is a mechanism which performs its intended function — it fosters DE participation in PCS auctions and diversity of ownership. Thus, OPM continues to support the existing C and F block auction framework that preserves Section 309(j) of the Communications Act's mandate to ensure meaningful DE participation.

Respectfully submitted,

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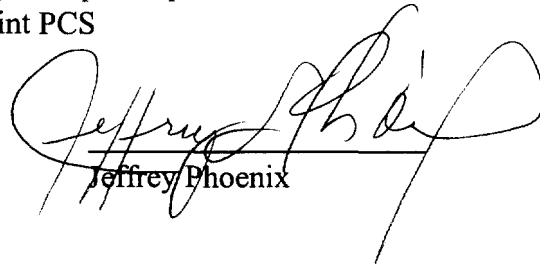
April 17, 2000

## **CERTIFICATE OF SERVICE**

I, Jeffrey Phoenix, hereby certify that copies of the foregoing Response have been served on the following persons by U.S. mail this 17th day of April, 2000.

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